

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROSE ASHBURN,

No. C 06-01326 WHA

Plaintiff,

v.

**ORDER DISMISSING CASE
WITHOUT PREJUDICE
AND FINDING AS
MOOT DEFENDANTS'
MOTION TO STAY**

ASTRAZENECA PHARMACEUTICALS,
L.P., *et al.*,

Defendants.

Plaintiff filed her complaint on February 23, 2006. Defendants answered the complaint on July 7, 2006. This action was reassigned to the undersigned judge from Magistrate Judge Chen on August 16, 2006, after plaintiff declined consent to proceed before a Magistrate Judge.

On July 12, prior to reassignment, plaintiff had requested voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2). On August 1, also prior to reassignment but after plaintiff's request for voluntary dismissal, defendants moved to stay this action pending a transfer determination by the Judicial Panel on Multidistrict Litigation.

"A district court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer some plain legal prejudice as a result." *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001). This district court has recently noted some of the considerations that *fail* to constitute plain legal prejudice:

1 “[U]ncertainty because a dispute remains unresolved or because
2 the threat of future litigation . . . causes uncertainty does not result
3 in plain legal prejudice. Also, plain legal prejudice does not
4 result merely because the defendant will be inconvenienced by
5 having to defend in another forum or where a plaintiff would gain
6 a tactical advantage by that dismissal.” Furthermore, “the
7 expense incurred in defending against a lawsuit does not amount
8 to legal prejudice.”

9 *Williams v. Peralta Cmty. Coll. Dist.*, 227 F.R.D. 538, 539 (N.D. Cal. 2005) (quoting *Westlands*
10 *Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996)).

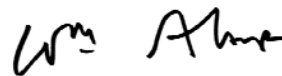
11 It seems the only possible “prejudice” that could come to defendants from permitting
12 voluntary dismissal is the possibility of plaintiff re-filing this action again in this forum. This
13 might result in the small added expense of having to notice the action again for transfer to the
14 MDL Panel. It might also provide a very slight tactical advantage to plaintiff to stay in this
15 forum, if the MDL Panel ultimately determines no further transfers are to be accepted. These
16 potential problems, however, fail to constitute plain legal prejudice under the authority cited
17 above.

18 Furthermore, plaintiff’s request was filed *prior* to defendants’ motion to stay this action.
19 The question of dismissal should, therefore, be decided in advance of the stay motion.

20 Defendants’ motion is moot and is, therefore, **DENIED**. Plaintiff’s request for voluntary
21 dismissal is **GRANTED**. Given the absence of undue hardship to defendants, the dismissal is
22 without prejudice. *Williams*, 227 F.R.D. at 539–40.

23 **IT IS SO ORDERED.**

24 Dated: August 28, 2006

25 

26 WILLIAM ALSUP
27 UNITED STATES DISTRICT JUDGE
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